

AMENDMENT

IN THE DRAWINGS:

Please amend Fig. 1 by inserting the label "Data Correlator" in the box 70 and by inserting the label "Bandwidth Monitoring Device" in the box 80. Please amend Fig. 3. by inserting the label "LPF" in the boxes 300, 310, 320, 330, and 340, and by inserting the label "Decoder" in the box 450. This amendment is illustrated in the accompanying amended drawing, which is labeled "Replacement Sheet" in the top margin thereof.

REMARKS

Claims 1-27 are pending in the application. Claim 2 is currently amended for clarification with this response. Applicants note with appreciation the provisional allowance of claims 3-8, 14, 18, 19 and 23-27. Reconsideration of the application is respectfully requested based on the following remarks.

I. OBJECTION TO CLAIM 2

Claim 2 was objected to because of informalities. Claim 2 is currently amended for clarification. Withdrawal of the objection is respectfully requested.

II. REJECTION OF CLAIMS 1 and 11 UNDER 35 U.S.C. § 102(b)

Claims 1 and 11 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 7200336 (Yu). Applicants respectfully request reconsideration of the claims based on the remarks below.

i. Yu does not constitute prior art under 35 U.S.C. 102 (b).

MPEP § 2131 states the following:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year **prior to the date of application** for patent in the United States.

Yu does not constitute prior art under 35 U.S.C. §102(b). Yu has been filed on the date of October 25, 2005 which is after the filing date of the present application filed on April 9, 2004 (and which claims priority to a provisional application number 60/540,759 filed on January 30, 2004). Therefore, Yu does not constitute prior art.

III. REJECTION OF CLAIMS 20-22 UNDER 35 U.S.C. § 102(b)

Claims 20-22 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Publication No. 20040037378 (Komori). Applicants respectfully request reconsideration of the claims based on the remarks below.

- i. **Komori does not teach a data signal subjected to autocorrelation and the correlation signal being averaged over time, as recited in claim 20.**

Claim 20 is directed to a method for characterization of the data rate of a digital data signal. The method comprises subjecting the data signal to autocorrelation such that at least one digital correlation signal is formed, and subjecting the at least one digital correlation signal to averaging over time. The method further comprises utilizing the time mean value to produce a data rate measurement signal, which characterizes the data rate of the data signal.

Komori does not teach that a correlation signal is being averaged over time. Paragraphs 164, 167 and 168 recite that a burst detector 209 determines a correlation signal. No mention of the correlation signal being averaged is taught. Moreover, Komori does not teach any data rate utilizing an averaged correlation signal.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. MPEP § 2131 (*citing Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). As set forth above, the cited reference fails to expressly or inherently teach that a data signal is subjected to autocorrelation and the correlated signal is being averaged over time. Accordingly, withdrawal of the rejection is respectfully requested.

- ii. **Komori does not inherently teach a data signal subjected to autocorrelation and the correlation signal being averaged over time, as recited in claim 20.**

To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." MPEP § 2112 (*citing In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)). In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. MPEP § 2112 (*citing Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Neither a basis nor any technical reasoning has been provided in the Office Action to show that any data rate calculation utilizes an averaged correlation signal. Because a probability that the teachings may be present is inadequate, applicants respectfully submit that **evaluation of a correlation signal being averaged over time and subjected to autocorrelation is not necessarily present within Komori**, and thus the reference does not anticipate the claimed invention. Accordingly, withdrawal of the rejection is respectfully requested.

IV. REJECTION OF CLAIMS 2, 12, 13, 15, 16, AND 17 UNDER 35 U.S.C. § 103(a)

Claims 2, 12, 13, and 15 were rejected under 35 U.S.C. § 103(a) as being obvious over Yu in view of Komori. Claims 16 and 17 were rejected as being obvious over Yu in view of Komori and further in view of U.S. Publication No. 20040142670 (Ciccarelli). Withdrawal of the rejection is respectfully requested for at least the following reasons.

As stated above, Yu is not prior art. Claim 2 depends upon claim 1 respectively, and adds further limitations thereto. Claims 12, 13, 15, 16, and 17 depend upon claim 11 respectively, and add further limitations thereto. Because the primary reference is not prior art, it may not teach the present invention of independent claims 1 and 11. Because Komori and Ciccarelli fail to remedy the deficiencies in the primary reference, claims 12, 15, 16, and 17 are also non-obvious over the cited art. Accordingly, withdrawal of the rejection is respectfully requested.

V. CONCLUSION

For at least the above reasons, the claims currently under consideration are believed to be in condition for allowance.

Should the Examiner feel that a telephone interview would be helpful to facilitate favorable prosecution of the above-identified application, the Examiner is invited to contact the undersigned at the telephone number provided below.

Should any fees be due as a result of the filing of this response, the Commissioner is hereby authorized to charge the Deposit Account Number 50-1733, MAIKP172US.

Respectfully submitted,
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